

HOUSE BILL 3874

By Swann

AN ACT to amend Chapter 102 of the Private Acts of 1979; as amended by Chapter 23 of the Private Acts of 1983; Chapter 181 of the Private Acts of 1988; Chapter 26 of the Private Acts of 1993; Chapter 17 of the Private Acts of 2003 and Chapter 15 of the Private Acts of 2009; and any other acts amendatory thereto relative to the Blount County occupancy tax and a Tourism Board for Blount County, Alcoa and Maryville.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 102 of the Private Acts of 1979; as amended by Chapter 23 of the Private Acts of 1983; Chapter 181 of the Private Acts of 1988; Chapter 26 of the Private Acts of 1993; Chapter 17 of the Private Acts of 2003; Chapter 15 of the Private Acts of 2009; and any other acts amendatory thereto is amended by deleting all such language therein and substituting instead the following:

Section 1. As used in this act, unless the context requires otherwise, the following terms shall have the meanings indicated:

(a) "Alcoa" means the City of Alcoa.

(b) "Board" means the Tourism Board created pursuant to Section 9 whose purpose it shall be to promote tourism and convention business in Blount County.

(c) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel or campground valued in money whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property and service of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is

complimentary from the operator and no consideration is charged or received from any person.

(d) "County" means Blount County, Tennessee.

(e) "Governing body" means each of the following: County Commission of Blount County, the Board of Commissioners of the City of Alcoa and the City Council of the City of Maryville, Tennessee, and "governing bodies" means collectively all of such legislative bodies.

(f) "Hotel" means any structure, or any portion of any structure, or any campground space, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist court, tourist camp, campground, tourist cabin, motel, or any place in which rooms, lodging or accommodations are furnished to transients for consideration.

(g) "Maryville" means the City of Maryville, Tennessee.

(h) "Municipalities" means, collectively, the County, Alcoa and Maryville.

(i) "Occupancy" means the use or possession or the right to use of possession of any room, lodging, or accommodations in a hotel for a period of less than thirty (30) continuous days.

(j) "Operator" means the person operating the hotel whether as owner, lessee, or otherwise, and shall include governmental entities.

(k) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(l) "Tax collection official" means the county clerk.

(m) "Tax Revenues" means all revenues allocated to the board from the privilege tax authorized to be levied pursuant to this act.

(n) "Tourism" means the planning and conducting of programs of information and publicity designed to attract to the County tourists, visitors and

other interested persons from outside the area and also encouraging and coordinating the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the area, and shall also include the acquisition, construction, and remodeling of facilities useful in the attraction and promoting of tourists, conventions, and recreational business.

(o) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings, accommodations in a hotel room or campground for a period of less than thirty (30) days.

Section 2. The County is hereby authorized to levy a privilege tax upon the privilege of occupancy in any hotel by a transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The rate of the tax shall be set annually before the July term by the governing body of the County, provided, however, that the board shall provide a recommendation to the County as to the amount of such tax at least twenty (20) days prior to the vote each year establishing the amount of such tax. Such tax is a privilege tax upon the transient occupying the room or space and shall be paid by such transient.

Section 3. The tax shall be added by each operator to each invoice prepared by the operator for the occupancy of such person's hotel. Such invoice shall be given directly or transmitted to the transient, and a copy thereof shall be filed each month by the operator and retained as provided by Section 7 hereof.

Section 4.

(a) The tax hereby levied shall be remitted by all operators who lease, rent, or charge for any hotel for occupancy to the county clerk not later than the twentieth (20th) day of each month next following such collection from the transient. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during or after occupancy, as may be the custom of the operator. The county clerk of the County will provide a list of the operators who remit the tax levied by this act each month to the property assessor of the County for review.

(b) For the purpose of compensating the operator for the expense of accounting for and remitting the tax levied by this act, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the county clerk in the form of a deduction in submitting such operator's report and paying the amount due by such operator, provided, however, that the amount due was not delinquent at the time of payment.

(c) For the purpose of compensating the County for collecting the tax, the tax collector official shall be allowed to retain two percent (2%) of the amount of tax remitted by an operator.

Section 5. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will be added to the rent, or that, if added, any part will be refunded.

#### Section 6.

(a) Taxes collected by an operator which are not remitted to the tax collection official on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at a rate of eight (8%) per annum, and in addition shall pay a penalty on such taxes of one percent (1%) for each month or fraction thereof that such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted.

(b) Each occurrence of knowing refusal of an operator to collect or remit the tax or knowing refusal of a transient to pay the tax imposed is a separate violation of this act and may result in the imposition of a civil penalty, to be imposed separately for each violation, not to exceed fifty dollars (\$50.00) upon a finding of such knowing refusal by a court of competent jurisdiction. As used in this section, "each occurrence" means each day.

(c) Nothing in this section shall be construed to prevent the county clerk or other authorized collector of the tax from pursuing any civil remedy available to the collector by law, including issuing distress warrants and the seizure of assets, to collect any taxes due or delinquent under this act.

Section 7. It is the duty of every operator liable for the collection and payment of any tax imposed by this act to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax, which records the tax collection official shall have the right to inspect at all reasonable times.

Section 8. In administering and enforcing the provisions of this act, the tax collection official shall have as additional power the powers and duties with respect to collection of taxes provided in Tennessee Code Annotated, Title 67, or otherwise provided by law. Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in Tennessee Code Annotated, Section 67-1-911, it being the intent of this act that the provisions of law which apply to the recovery of taxes illegally assessed and collected shall apply to the tax collected under the authority of this act; provided, the tax collection official shall possess those powers and duties as provided in Tennessee Code Annotated, Section 67-1-911, with respect to adjustment and settlement with taxpayers of all the errors of taxes collected by the tax collection official under the authority of this act and to direct the refunding of same. Notice of any tax paid under protest shall be given the tax collection official, and suit for recovery shall be brought against such tax collection official.

Section 9. For the purposes set forth herein, including the promotion of tourism and conventions, authorization is hereby granted to establish, and there is hereby established, an entity to be known as the Smoky Mountain Tourism Board and referred to in this act as the "board". The board shall have a board of directors in which all powers of the board will be vested. The board of directors shall be comprised of ten (10) directors, who shall be selected as follows and as provided in Section 11:

(1) A person who shall be either the County Mayor or a member of the governing body of the County and who shall be appointed by the governing body of the County;

(2) A person who shall be appointed by the governing body of Alcoa;

(3) A person who shall be appointed by the governing body of Maryville;

(4) A person who shall be appointed by the board of directors of the Blount County Chamber of Commerce;

(5) Two (2) persons who reside or operate a business within Alcoa, who shall be selected as provided in Section 11;

(6) Two (2) persons who reside or operate a business within the City of Townsend or Walland area, who shall be selected as provided in Section 11; and

(7) Two (2) persons who reside or operate a business within Maryville, who shall be selected as provided in Section 11.

The directors of the board shall serve without compensation, except for reimbursement of necessary expenses incurred by directors in performance of their duties. All directors shall be residents of Blount County,

Section 10. The term of each director on the board shall be for six (6) years, provided that any director shall continue to serve beyond the end of his or her term until his or her successor has been appointed, provided that the board at its first organization meeting shall establish the terms of the initial directors so that the directors serve staggered terms and an approximately equal number of directors have terms that expire in each year. The board shall provide to each governing body the initial terms assigned to each director. The term of a director is renewable, subject to reappointment as provided in Section 11.

Section 11. The directors selected by the municipalities pursuant to subdivisions (1), (2) or (3) of Section 9 or by the Blount County Chamber of Commerce pursuant to subdivision (4) of such Section shall become directors of the authority without any further action by the municipalities, and upon any vacancy in the office of any such director, such vacancy shall be filled by appointment of the appropriate entity. Except for the foregoing directors, the directors of the board shall be jointly elected by the governing bodies of the municipalities as provided in this Section 11. Upon the initial election of these directors, upon the appointment or reappointment of a director following the conclusion of a term in office, or upon any vacancy in term of such director, by reason of death, resignation or other cause, a membership advisory committee comprised of three

(3) directors of the board shall create a list of eligible candidates (with not less than three (3) candidates on such list for each open director position) and shall submit such list to the board for consideration. When such list of eligible directors of the board is approved by resolution of the board, such list shall be submitted for consideration to the governing bodies of the municipalities in order of preference. The governing bodies of the municipalities shall appoint by resolution the director(s) from such list with each such director requiring the approval of the governing body of each municipality. If a person is chosen to fill a vacancy as a director of the board, such director shall hold office for the unexpired term with respect to which such vacancy occurred.

Section 12 . A majority of the whole board shall constitute a quorum for the transaction of any business. Unless a greater number or percentage is required, or otherwise by state law, the vote of a simple majority of the directors of the board present at any meeting at which a quorum is present shall be the action of the authority. To the extent permitted by applicable law, the board may permit any or all directors to participate in an annual, regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 13. Public notice of all meetings, whether annual, regular or special, of the board, shall be given in accordance with the open meetings law compiled in Tennessee Code Annotated, title 8, chapter 44.

Section 14. The officers of the board shall consist of a Chairman, Vice Chairman, Secretary, Treasurer, and such other officers as the board shall from time to time deem necessary or desirable. The offices of Secretary and Treasurer may be held by the same person.

Section 15. The initial officers of the board shall be elected by the board of directors at its first meeting following the appointment of the directors as provided in this act or as soon thereafter as may be convenient. Each initial officer shall hold office until the first annual meeting of the board, which shall be held in January 2013, and thereafter

until his or her successor has been duly elected and qualified. Subsequent officers of the board shall be elected at the annual meeting of the board. Each such officer shall be elected for a one-year term but shall continue to hold office until his or her successor has been duly elected and qualified. The annual meeting of the board shall be held in January of each year.

Section 16. The Chairman shall preside at all meetings of the directors, discharge all the duties which devolve upon a presiding officer, and perform such other duties as may be prescribed by the board.

Section 17. The Vice-Chairman shall perform such duties as may be assigned to him or her. In the case of the death, disability or absence of the Chairman, the Vice Chairman shall perform and be vested with all the duties and powers of the Chairman. The Secretary shall keep the record of the minutes of the proceedings in each meeting and shall have custody of all books, records, and papers of the board, except such as shall be in charge of the Treasurer or such other person or persons authorized to have custody and possession thereof by a resolution of the board. The Treasurer shall keep account of all money received and disbursed and shall deposit same with a bank or trust company which is a member of the Federal Deposit Insurance Corporation.

Section 18. Other officers shall perform such duties as shall be designated by the board.

Section 19. Each of such officers may be removed at any time by the affirmative vote of a majority of the whole board.

Section 20. The proceeds from the tax levied herein (after the deductions provided in Section 4) shall be apportioned and distributed by the county trustee as follows on at least a monthly basis:

(a) Fifty (50%) percent of the proceeds of the tax shall be distributed to the board to be used for any purpose of the board including the promotion of tourism, the maintenance, staffing and supplying of public visitor centers in the County, and the undertaking of any projects, including the financing thereof;



(b) Thirty (30%) percent of the proceeds of the tax shall be deposited in the general fund of the County; and

(c) Twenty (20%) percent of the tax shall be distributed to the board and shall be used by the board to pay the cost of that certain parcel of property to be acquired by the board located directly adjacent to the existing Townsend Visitors Center located at 7906 East Lamar Alexander Parkway. Once all costs relating to the acquisition of such property are fully paid, then seventy (70%) percent of the proceeds from the tax levied herein shall be apportioned to the board and used as provided in subsection (a), above.

Section 21. The tax collected by the tax collection official shall be remitted to the county trustee and distributed by the trustee in accordance with the terms of this act and the laws of the state of Tennessee.

Section 22. The privilege tax levied by this act shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

Section 23. The board created by this act may become the initial board of a Tourism Development Authority if the municipalities create a Tourism Development Authority as provided by general law and upon approval of all creating municipalities at which point the board created pursuant to this act shall terminate and then the existing terms of office of each particular board member shall remain until the expiration of each board member's term of office. In addition:

(1) All duties and responsibilities of the board shall be transferred to the Tourism Authority.

(2) All documents in the possession of the board shall be transferred to and remain in the custody of the Tourism Development Authority.

(3) All leases, contracts and contract rights and responsibilities in existence with the board with respect to the duties transferred shall be preserved and transferred to the Tourism Development Authority.

(4) All assets, liabilities, properties and obligations of the board with respect to the duties transferred shall become the assets, liabilities, properties and obligations of the Tourism Development Authority.

Section 24. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 2. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the governing bodies of Blount County, Alcoa, and Maryville. Its approval or non-approval shall be proclaimed by the presiding officer of each governing body and certified to the secretary of state.

SECTION 3. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 2.